

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALBERT GRAY, ET AL

VS.

JEFFREY DERDERIAN, ET AL

VS.

HOME DEPOT, INC.

C.A. NO. 04-312-L

**DEFENDANTS, FOAMEX INTERNATIONAL, INC., FOAMEX LP AND
FMXI, INC. AND GENERAL FOAM CORPORATION,
GFC FOAM, LLC, PMC, INC. AND PMC GLOBAL, INC.'S, OBJECTION TO
PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY**

Defendants Foamex International, Inc., Foamex LP and FMXI, Inc. ("Foamex") and General Foam Corporation, GFC Foam, LLC, PMC, Inc. and PMC Global, Inc. ("General Foam") hereby object to plaintiffs' motion for leave to file a sur-reply in the above matter. In support of this objection, these defendants respectfully submit that the issues raised in the Motions to Dismiss have been thoroughly briefed and that there is no need for further memoranda.¹ Although plaintiffs suggest that a sur-reply is necessary to present their position with "absolute clarity", they identify no specific issues upon which they believe the Court requires further guidance. Further, neither the Local Rules of this Court, nor Amended General Order #2002-01, as amended by this Court by order dated September 8, 2004, provide

¹ Foamex and General Foam have also filed Motions to Dismiss in George Guindon, et al v. American Foam Corporation, et al, C.A. No. 03-335-L, Tammy Passa, et al v. Jeffrey Derderian, et al, C.A. No. 03-148-L, Linda Roderiques, et al v. American Foam Corporation, et al, C.A. No. 04-26-L and Charles and Carol Sweet, et al v. American Foam Corporation, et al, C.A. No. 04-56-L. The Court has had the benefit of memoranda of law in all of these cases including a separate response memorandum filed on behalf of plaintiff Michelle Spence, a plaintiff in the *Guindon* case.

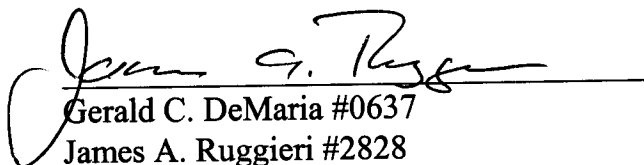
for the filing of a sur-reply.

In support of their motion for leave to file a sur-reply, plaintiffs also state that they are in the process of moving to amend their complaint and "...seek to incorporate these amended pleadings into their arguments." The fact that a motion to amend the complaint will be filed, provides no support to plaintiffs' argument that a sur-reply is necessary. First, the parties are operating under the existing complaint and it is speculative to assume that the Court will be dealing with an amended complaint at the time of the December 9, 2004 hearing. Furthermore, the plaintiffs have set forth their intention to file an amended complaint in their memoranda in response to the Motions to Dismiss filed by Foamex and General Foam and this Court has nonetheless seen fit to schedule these motions for hearing. The issues raised in Foamex and General Foam's Motions to Dismiss have been squarely joined and the proposed amended complaint should have no effect on the court's ability to adjudicate these issues.

For the reasons set forth above, Foamex and General Foam respectfully request that plaintiffs' motion to file a sur-reply be denied.

Defendants
FOAMEX INTERNATIONAL, INC., FOAMEX,
LP, FMXI, INC., GENERAL FOAM
CORPORATION, GFC FOAM, LLC, PMC, INC.
AND PMC GLOBAL, INC.
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CERTIFICATION

I hereby certify that on the 23rd day of November, 2004, a true copy of the within was mailed to:

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A handwritten signature in cursive script, reading "Jean Audier", is written over a horizontal line.